

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

HENSEL JOSEPH

§

VS.

§

CIVIL ACTION NO. 1:06cv751

ATTORNEY GENERAL A. GONZALES,
ET AL.

§

MEMORANDUM OPINION AND ORDER

Plaintiff Hensel Joseph,¹ an inmate confined at the Federal Correctional Complex in Beaumont, Texas, proceeding *pro se*, brings this lawsuit against Attorney General A. Gonzales; South Central Regional Director John Doe; and Warden Outlaw, the warden at the federal prison in which plaintiff is confined.

Discussion

Plaintiff complains that the defendants have acted with deliberate indifference to his medical needs, in violation of the Eighth Amendment and the Americans with Disabilities Act.

Plaintiff did not submit the \$350.00 filing fee along with his complaint. Accordingly, the court assumes plaintiff intends to proceed *in forma pauperis* in this action.

Analysis

Section 1915(g)

Title 28 U.S.C. § 1915(g) prohibits prisoners from repeatedly filing frivolous or malicious complaints. Section 1915(g) provides as follows:

¹ Plaintiff is also known as Joseph Hensel, TDCJ No. 900412, Federal Prisoner Reg. No. 69009-004, SID No. 6040922.

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action [*in forma pauperis*] . . . if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

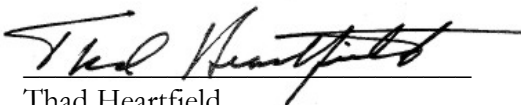
Prior to the date on which he filed this lawsuit, plaintiff has on at least three prior occasions, while incarcerated, brought actions or appeals that were dismissed as frivolous, malicious, or for failing to state a claim upon which relief may be granted.² As a result, petitioner is barred from bringing this action *in forma pauperis* unless he was in imminent danger of serious physical injury at the time he filed this lawsuit. *Banos v. O'Guin*, 144 F.3d 883, 884 (5th Cir. 1998).

As set forth above, plaintiff has had at least three prior lawsuits or appeals dismissed as frivolous, malicious, or for failure to state a claim. The allegations set forth in the complaint do not demonstrate that he is in "imminent danger of serious physical injury." Section 1915(g) therefore bars petitioner from proceeding further with this lawsuit on an *in forma pauperis* basis.

Conclusion

For the reasons set forth above, this action will be dismissed without prejudice pursuant to 28 U.S.C. § 1915(g). An appropriate final judgment shall be entered in accordance with this Memorandum Opinion.

SIGNED this the **30** day of **November**, 2006.


Thad Heartfield
United States District Judge

² See *Joseph v. TDCJ-ID*, Civil Action No. SA-00-CV-1263 (W.D. Tex.) (dismissed as frivolous), No. 03-50896 (5th Cir. May 11, 2004) (appeal dismissed as frivolous); and *Joseph v. TDCJ-ID*, Civil Action No. SA-03-CV-0464 (W.D. Tex. Aug. 13, 2003) (dismissed as frivolous and for failing to state a claim).